IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 356 of 2000()

CRA.136/1998 of ADDL.SESSIONS COURT, KOZHIKODE
CC.281/1995 of JUDL. MAGISTRATE OF FIRST CLASS-IV, KOZHIKODE

.....

REVN. PETITIONER:

GOPALAN, S/O.BALAN, NALUKUDI PARAMBA, VELLAYIL,
KACHERI AMSOM AND DESOM, KOZHIKODE.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS:

SUB INSPECTOR OF POLICE, NADAKAVU, KOZHIKODE DISTRICT,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKUJLAM.

BY PUBLIC PROSECUTOR SRI.RAVINDRA BABU.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

A.K. Basheer, J.

- -

Crl.R.P. No.356 of 2000

- -

Dated this the 29th day of November, 2007.

ORDER

Petitioner who has been concurrently found guilty under Sections 324 and 447 IPC by the trial court and the appellate court, has preferred this revision petition. While convicting the petitioner under Section 447, the trial court had imposed a fine of Rs.500/- and in default to undergo Simple Imprisonment for 15 days. Petitioner was sentenced to undergo imprisonment for 6 months and to pay a fine of Rs.1500/- under Section 324 IPC and in default to undergo Simple Imprisonment for one month. The appellate court had concurred with the above order of conviction in appeal but the sentence imposed on the petitioner under Section 324 IPC was modified and reduced to Simple Imprisonment for one month and to pay a fine of Rs.1500/-. The sentence under section 447 IPC was not interfered with.

2. The prosecution case in brief was that on February 6, 1995, the accused had trespassed into the courtyard of the residence of Pw.1 and inflicted a stab injury on the left side of his abdomen with M.O.1 knife. P.W.1 was taken to the hospital immediately by Pw.5 and Pw.7. The Doctor who had examined Pw.1 noted a cut injury on the left side of his abdomen as revealed from Ext.P6 wound certificate P.w.1 was admitted in the hospital as an inpatient. According to Pw.1, the accused had come to the courtyard of his

residence and demanded him to send out Smt. Kalliani, his wife's sister from the house. Incidentally Smt. Kalliani is the mother in law of petitioner's daughter. Pw.1 had stated that when he refused to send Kalliani out of his house as demanded by the accused, he had gone away. But he came back a little later with his wife and children. He again made a demand that Kalliani should be sent out, which ultimately resulted in an altercation . At that stage, the accused had stabbed Pw.1 on the left abdomen. Pw.1 had narrated the incident to the Police at the hospital. Ext.P1 statement was accordingly recorded and Ext.P5 FIR was registered. Apart from Pw.1, the prosecution had examined Pw.2 to Pw.15 and Exts.P1 to P7 and M.O.1 to M.O.4 were marked. On an elaborate consideration of the oral and documentary evidence, the trial court found that the prosecution had succeeded in proving the charge against the petitioner and he was accordingly found guilty under Section 447 and 324 IPC and was convicted and sentenced as stated earlier. In appeal the order of conviction on both counts was confirmed; but the sentence under Section 324 IPC was modified and reduced. It is in the above circumstances that the petitioner has preferred this revision petition challenging the order of his conviction and sentence.

3. It is contended by learned counsel for the petitioner that the courts below have found the petitioner guilty solely on the basis of the evidence of Pw.1. It is true that Pws.2 to 4 who were cited as eye witnesses had turned hostile to the prosecution. I have carefully perused the oral testimony of Pw.1. The defence had not in any way succeeded to discredit the evidence of this witness. Though some

minor contradictions were brought out in cross-examination, Pw.1 had categorically narrated the incident in clear terms. He had stated that the accused had come to his courtyard and demanded him to send out Smt.Kalliani from his house. On his refusal to oblige, the accused had stabbed him on his abdomen with M.O.1 knife.

4. In this context it is pertinent to note that P.w.1 had stated that Pw.2 Sasi had snatched away the knife from the accused. It was Sasi who had produced the knife before the Police. Sri.Sasi who was examined as Pw.2 stated before the court that he had not seen the incident. But significantly he admitted his signature in Ext.P3 seizure mahazar under which M.O.1 knife was seized by the Police. P.ws. 8 and 9 had deposed before the court that they had seen Sasi producing the knife before the Police. Thus the prosecution had succeeded in establishing the fact that the weapon which was used by the accused to inflict the injury on Pw.1 had been properly seized shortly after the alleged incident. It is true that Pws.3 and 4 who were also cited as eye witnesses did not support the prosecution case. But still as mentioned earlier, the evidence of Pw.1 had inspired confidence in the trial court and the appellate court. On a careful perusal of the deposition of Pw.1, I do not find any reason to disbelieve his testimony, even if his version with regard to the narration of the incident had not been corroborated by any other witness. Further, there is no dispute that Pw.1 was taken to hospital immediately after the alleged incident. The Doctor at the Medical College who had examined him had issued Ext.P6 wound certificate which revealed that Pw.1 had sustained an injury on the left

abdomen as stated by him. Further Pw.1 had stated that M.O.2 to 4 bloodstained clothes were taken into custody by the Police in the presence of witnesses, who had admitted their signature in Ext.P2 mahazar. Thus the prosecution had succeeded in establishing the case on all material aspects.

5. Therefore I am satisfied that the courts below were justified in holding the petitioner guilty under section 447 and 324 IPC. The appellate court had in fact shown leniency in the matter of sentence and reduced it from 6 months simple imprisonment to one month's simple imprisonment under section 324 IPC. In my view that will meet the ends of justice. There is no merit in any of the contentions raised by the petitioner.

The Crl.R.P. fails and it is dismissed.

A.K. Basheer
Judge.

an.